

REMARKS

Applicant wishes to thank the Examiner for the careful consideration given this case. Claims 1-3 and 7-16 are pending in this application. Claims 1 and 16 have been amended. No new matter has been added.

35 U.S.C. § 103

Claims 1-3 and 7-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,860,991 to Klein et al. (hereinafter “Klein”) in view of U.S. Patent No. 5,741,277 to Gordon et al. (hereinafter “Gordon”). The Examiner concedes that Klein does not teach needle holder arms as recited in the pending claims, but alleges that Gordon describes needle holder arms that are angled and connected to the distal end of the connecting rod. Applicant respectfully disagrees.

First and foremost, Applicant maintains that Gordon fails to cure the conceded deficiencies of Klein because Gordon fails to teach or fairly suggest “needle holder arms being angled and connected to the distal end of said connecting rod” in independent claims 1 and 16 as presented in the Response and Amendment filed June 5, 2009. However, solely for the purpose of facilitating allowance of the pending claims, Applicant has further amended independent claims 1 and 16 to clarify that the needle holder arms are “connected directly to the distal end of said connecting rod” (emphasis added). As previously described, Gordon teaches a mechanism in which needle guide 58 (“needle holder arms”) are connected to the outer housing bosses 62 and are attached to the pushrod 42 (“connecting rod”) via deployment links 64a and 64b (see FIG. 6 and corresponding text). Thus, the needle holder arms of Gordon are not connected directly to the distal end of the connecting rod as recited in the pending independent claims. Applicant respectfully asserts that the combination of Klein and Gordon fail to teach or fairly suggest needle holder arms that are connected directly to the connecting rod, and therefore, this combination of references fails to teach or suggest every limitation of the pending claims.

Moreover, Applicant continues to assert that removing the deployment links 64a and 64b such that the needle guides are directly connected to the connecting rod would destroy the functionality of the mechanism of Gordon because the needle holder arms would never reach the needle catch. For example, as illustrated in Gordon FIG. 6 and FIGs. 4A and 4B, the deployment link or driving link 64a and 64b allows the needle guides 58a and 58b to pivot

around the pivot pins 60a and 60b that are disposed within the housing bosses 62a and 62b and extend lateral away from each other when the connecting rod is depressed (col. 17, lns 14-25). Removing the deployment or driving link and connecting the needle guides to the push rod would essentially fuse the needle guides such that the push rod could not be depressed and the needle guides could not extend laterally away from each other. Therefore, modifying the mechanism of Gordon to provide needle guides that are “connected directly to the distal end of said connecting rod” as recited in independent claims 1 and 16 would render the needle/suture complex of Gordon unsatisfactory for its intended purpose, and there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) and MPEP 2143.01(V).

Applicant respectfully asserts that support for the term “directly” as presented in amended independent claims 1 and 16 is implicitly provided throughout the specification because the needle holder arms of Applicant’s claimed device are connected directly to the connecting rod in each Figures 1-8. Therefore, Applicant’s amendment, “connected directly to the distal end of said connecting rod” does not necessitate a rejection under 35 U.S.C. § 112, 1st paragraph. As reviewed in *Ex parte Parks*, 30 U.S.P.Q.2d 1234, 1236 (1993), the Federal Circuit has held that, “[a]dequate written description under [35 U.S.C. § 112, first paragraph] does not require *literal* support for the claimed invention” (emphasis original), *In re Herschler*, 591 F.2d 693 (CCPA 1979), *In re Edwards*, 568 F.3d 1349 (CCPA 1978), *In re Withrheim*, 541 F.2d 257 (CCPA 1976). Rather, “[i]n rejecting a claim under 35 U.S.C. [§] 112 for lack of written description, it is incumbent on the Examiner to establish that the originally filed disclosure would not have reasonably conveyed to one having ordinary skill in the art that an appellant had possession of the now claimed subject matter,” *Wang Laboratories, Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993), and “it is sufficient [that] the originally filed disclosure would convey to one having ordinary skill in the art that an appellant had possession of the concept of what is claimed,” (emphasis added) *In re Anderson*, 471 F.2d 1237 (CCPA 1973). Applicant respectfully asserts that by virtue of illustrating the needle holder arms as being connected directly to the connecting rod in each of Figures 1-8, the skilled artisan would understand that Applicant was in possession of a device in which the needle holder arms were connected directly to the connecting rod and, therefore, the specification as filed adequately conveys the concept of connecting needle holder arms directly to the connecting rod.

Accordingly, Applicant respectfully asserts that the absence of an explicit statement that the needle holder arms are connected directly to the connecting rod should not necessitate a rejection for lack of written description under 35 U.S.C. § 112, first paragraph.

Additionally, solely for the purpose of facilitating allowance of the pending claims, Applicant has further amended the pending claims to recite, “said needle holder arms and angled needles held thereby each have bends that enable the needles to achieve an orientation that is perpendicular to serous membrane and fascia and parallel to the cannula.” Neither Klein nor Gordon teach or fairly suggest a needle suture complex in which both needle holder arms and needles have bends. Rather, Klein teaches curved needles 20 and straight needle holders (shank ends 26), and Gordon teaches curved needle holders 58a and 58b and straight needles 88a and 88b. Applicant notes that Merriam Webster’s defines bend as “2: something that is bent: as a : a curved part of a path...” (Merriam-Webster’s Collegiate Dictionary 11th Edition, 2007) and bent as “1: changed by bending out of an originally straight or even condition” (*Id.*). Thus, the term “bend” incorporates needles that include both straight and angled sections and excludes purely curved needles and needled holder arms. Moreover, as the Examiner will surely realize, the curved needles such as those described in Klein cannot achieve an “orientation that is perpendicular to serous membrane and fascia and parallel to the cannula.” Therefore again, the combination of Klein and Gordon fail to teach or suggest the arrangement of needle holder arms and needles recited in independent claims 1 and 16, and fail to teach or fairly suggest every element of the pending claims.

For at least the reasons set forth above, Gordon fails to cure the deficiencies of Klein, and this combination of references fails to render independent claims 1 and 16 obvious. Claims 2, 3 and 7-15 either directly or indirectly depend on and add further limitations to amended independent claim 1 and are allowable for at least the same reasons as amended independent claim 1. Accordingly, reconsideration and withdrawal of the Examiner’s rejection is respectfully requested.

CONCLUSION

In view of the amendments and remarks presented hereinabove, Applicant submits that the pending claims are in condition for allowance and respectfully request that they be passed to issue. Should the Examiner have any questions or comments, or need any additional information from Applicant's attorney, she is invited to contact the undersigned at her convenience.

In the event that any additional fees are required with this submission, the Commissioner is hereby authorized to charge or credit such fees to Deposit Account No. 50-0436.

RESPECTFULLY SUBMITTED,



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